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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Streamlining Broadcast EEO)
Rules and Policies, Vacating the)
EEO Forfeiture Policy Statement) MM Docket No. 96-16
and Amending Section 1.80 of the)
Commission's Rules To Include)
EEO Forfeiture Guidelines)

COMMENTS OF
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS

These Comments are filed by the Association of America's Public Television Stations ("APTS") in response to the Commission's Order and Notice of Proposed Rulemaking in MM Docket No. 96-16, released February 16, 1996 (the "Notice").

APTS is a nonprofit membership organization whose members are licensees of virtually all of the nation's public television stations. APTS serves as the national representative of these stations, presenting their views in proceedings before Congress, the Federal Communications Commission and other agencies, and participating in other activities.

I. Background

The Commission proposes to modify its equal employment opportunity ("EEO") requirements in order to provide relief from "EEO requirements [that] may unnecessarily burden broadcasters, particularly licensees of smaller stations and other distinctly situated broadcasters. . . ."^{1/} Among other things, it proposes either to relieve smaller stations from

^{1/} Notice at ¶ 1.

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their obligation to comply with EEO filing and recordkeeping requirements or to afford stations greater flexibility in deciding how to recruit minority and female employees.^{2/}

APTS and its members strongly support the goals underlying the Commission's EEO policy: to deter discriminatory employment practices and to foster programming services that reflect the interests of diverse facets of the broadcaster's community. Indeed, these goals are integral to the mission of APTS's members, as public broadcasters, to provide programming services that serve diverse needs and interests that may not be served adequately by commercial media.

Notwithstanding their strong commitment to EEO goals and policies, public television stations are receptive to the Commission's proposals to afford them greater flexibility to achieve EEO goals. Public television stations are noncommercial enterprises that must struggle to conserve their resources in an era of shrinking funding. Approximately 42% of noncommercial stations are small stations with fewer than twenty-five full-time employees, and approximately two-thirds serve markets smaller than the top fifty. All noncommercial stations must struggle, during this era of contracting funding, to serve diverse constituencies and maintain their programming services at the high level that viewers have come to expect. Small stations and those in small markets often have the fewest funding options and must face hard choices on a daily basis concerning how to deploy their limited resources effectively. Further, noncommercial stations often have difficulty attracting and retaining qualified minority employees because they must compete with commercial stations that can offer higher salaries. Thus, any regulatory reforms that would assist noncommercial stations

^{2/} Notice at ¶¶ 23-26.

in achieving EEO goals more effectively and more efficiently and make it less likely that they would have to shoulder the financial burden of defending their employment practices at renewal time would certainly be welcome.

II. Stations Should Be Afforded Greater Flexibility to Decide How Best To Recruit Minority and Female Employees.

A. Participation in Recruitment Events.

The Commission proposes to give stations greater flexibility in fulfilling their obligation to recruit minority and female employees.^{3/} It suggests that stations be permitted either to contact minority recruitment sources for each opening on their staffs, as they do now, or have management-level staff participate in recruiting events, such as job fairs or on-campus interviewing, a minimum number of times each year.^{4/} If the station chooses the latter option, it would develop a file of resumes that would include those of minority and women candidates, which it could use to interview candidates for "current or subsequent vacancies."^{5/} The station would have to keep records of the recruitment events attended and keep its files current by discarding old resumes.^{6/}

APTS supports the Commission's proposal to give stations additional options in deciding how to recruit women and minority employees most effectively and efficiently. Participating at local job fairs and on-campus interviewing may, in some circumstances, be a

^{3/} Since APTS advocates in these comments only that broadcast stations be afforded increased flexibility to fulfill their EEO obligations -- not that they be exempt from those obligations -- APTS's proposals could be applied to stations of all sizes.

^{4/} Notice at ¶ 24. The Commission suggests that participation in at least four recruitment events each year might be appropriate. Id.

^{5/} Id.

^{6/} Id.

more effective, personal and immediate way of making contact with prospective job candidates than using intermediary recruitment sources. Stations could keep records of employment candidates identified through this method in the same way that they now keep records of job candidates identified through recruitment agencies.

While attendance at job fairs or other in-person recruiting events could be an effective way to recruit minority, women and other employees, APTS has reservations concerning the Commission's proposal to require stations to attend a minimum number of such events per year, irrespective of whether the station has a vacancy on its staff at the time the event is held. Requiring a station to attend a recruiting event when it does not presently have an opening and may not even anticipate one in the near future would waste the time of both station personnel and prospective job applicants; the applicant would be applying for a job that does not yet exist and might very well have found alternate employment by the time a vacancy on the station's staff opens up. Worse yet, it would send the wrong signal to job applicants; applicants would get the message that station attendance at such events is pro forma -- that stations are going through the motions of attending such events in order to comply with regulatory requirements rather than to find candidates to fill actual vacancies.

This undesirable result could be avoided by requiring stations to attend recruitment events in order to recruit for specific current openings on their staffs. If a vacancy occurs and there is not a job fair or similar recruitment event that is imminent, the station could either wait for the next scheduled event or contact outside recruitment agencies, as they do under current procedures. If a station anticipates having a certain number of openings each year, it could choose to attend recruitment events before such openings occur so that it can

build up a file of resumes of suitable candidates, but it would not be required to attend recruitment events when it has no positions to fill.^{7/}

B. Joint Recruitment Efforts

APTS also supports the Commission's proposal to treat joint recruitment efforts, such as those conducted by a state broadcast association, as equivalent to individual station contacts with minority and/or female recruitment sources for purposes of evaluating stations' EEO efforts, provided certain requirements are met.^{8/} A centralized organization may be better able to contact a diverse array of minority recruitment agencies on a regular basis and maintain adequate EEO records than a small broadcast station. Of course, in order to fulfill its EEO obligations, the broadcast station would have to demonstrate that it utilized the central organization's resources and that those resources produced an adequate pool of applicants, including minority and women applicants. If they did not, the station should contact appropriate recruitment sources on its own.

In addition to permitting stations to rely on the recruitment efforts of a central organization that is distinct from the licensee, such as a state broadcast organization, the Commission should make it clear that where a single licensee operates several stations, that

^{7/} Alternatively, if the Commission is determined to require stations to participate in a minimum number of recruitment events each year without regard to whether the station has an opening at the time of the event, APTS suggests that the number of recruitment events that a station is required to attend be tied in some manner to the average number of vacancies that the station has filled during the previous two years. It would make little sense to require a small station that has experienced an average of only 1-3 openings during recent years to attend 4 job fairs a year in order to collect resumes. A small station with a stable staff and relatively few openings each year should be required to attend fewer recruitment events than a station with a larger staff and a more active hiring history.

^{8/} Notice at ¶¶ 31-33.

licensee can conduct its recruitment efforts and maintain EEO records for all of its stations centrally. Thus, for example, a state or regional public broadcast network that operates public television and/or radio stations at several locations across a state should be able to conduct its recruitment and maintain its records centrally, as long as it contacts appropriate recruitment sources for each location where it operates stations and maintains adequate records of its efforts.

C. Internship, Training and Other Employment Programs.

The Commission proposes to encourage broadcasters' participation in other "joint recruitment efforts" such as minority training, internship and employment programs conducted by foundations and broadcasters' associations.^{9/} It cites as examples programs that provide paid jobs or tuition assistance to students.^{10/}

APTS supports the Commission's proposal to consider not only a licensee's recruitment procedures and self-assessment of those procedures, but also other programs in which the licensee participates that improve the training of, and employment opportunities available to, minorities and women. While such programs may include the kinds to which the Commission refers in the Notice, the Commission should also take into account programs conducted by licensees themselves. In this connection, APTS notes that many noncommercial stations licensed to universities have a substantial number of student interns, and many of those interns are minority and women students. The kinds of internship training programs conducted by those licensees allow students to gain valuable, hands-on experience in

^{9/} Notice at ¶ 34.

^{10/} Id.

television and radio station operations, and could have a very positive long-term effect on the employment prospects of women and minorities in the broadcast industry; they expand the pool of qualified minority and women applicants and may also spark an interest in careers in the broadcast industry. Indeed, such programs could help to rectify one of the recurring complaints of broadcast stations in trying to achieve EEO goals: that there are not enough qualified women and minority candidates to fill their vacancies, particularly those requiring technical expertise. Thus, these programs, as well as recruitment of full-time employees, should be considered when the Commission evaluates a station's EEO performance at renewal time.

III. The Commission Should Include Part-time Employees Who Work at Least 15 Hours Per Week in the Station's Workforce Profile.

Although the Commission's Employment Report (FCC Form 395) solicits information concerning both full-time and part-time staff and vacancies, the Commission appears to ignore part-time positions when it scrutinizes a licensee's workforce profile at renewal time and assesses the adequacy of its recruitment efforts.^{11/} This is true even when the licensee indicates that it relies heavily upon employees working part-time to operate its station and that a large percentage of its part-time employees are minorities and women.^{12/} In the Notice, the Commission proposes to continue this practice, but seeks comment on whether

^{11/} See, e.g., Regents of New Mexico State University, FCC 96-231, released June 3, 1996, at ¶¶ 11-12; The Board of Trustees, Coast Community College, FCC 96-148, released May 6, 1996, at note 2; Applications of Certain Broadcast Stations Serving Communities in the Miami, Florida Area, 5 FCC Rcd 4893, n.24 (1990).

^{12/} See Regents of New Mexico State University, supra at ¶ 10.

part-time vacancies should also be considered and, if so, what weight they should be given.^{13/}

Where a licensee employs a substantial number of part-time employees to operate its station, failure to include those employees in the station's workforce profile gives an inaccurate picture of the licensee's workforce. This may result in situations like the one in Regents of New Mexico State University, *supra*, where the licensee is called upon to submit additional information and defend itself from allegations that it has violated the Commission's EEO policy even though there is no evidence that is the case and the licensee employs a substantial number of minority and female employees overall. Even if a station can ultimately vindicate its recruitment efforts, small noncommercial stations can ill-afford the substantial expense that such a defense entails.

For these reasons, APTS suggests that the Commission include in a station's workforce profile all paid part-time employees that work 15-30 hours per week.^{14/} It would be appropriate to "weight" part-time employees for purposes of calculating the percentage of minority and women employees on the licensee's staff at 50% of full-time employees since they work approximately half as much time as full-time employees.^{15/}

^{13/} Notice at ¶ 44.

^{14/} Employees working 30 or more hours per week are considered full-time employees. See FCC Form 395-B, Instructions, paragraph 8. Interns working in unpaid training positions should be considered separately, as discussed in Section II.C above.

^{15/} APTS qualifies this suggestion with one caveat. Most noncommercial broadcast stations that are licensed to universities employ a substantial number of university students on their staffs, since a primary function of the station is educational. Students are sometimes employed in non-paid "internship" positions and sometimes in paid part-time staff positions. Even when a university licensee includes in its workforce profile students who work in part-
(continued...)

IV. The Commission Should Continue To Permit the Use of Alternative Labor Force Data When the Licensee Demonstrates That Use of Such Data Is Appropriate.

In reviewing a broadcaster's compliance with the Commission's EEO policy at renewal time, the Commission compares the composition of the station's workforce with the relevant labor force in the Metropolitan Statistical Area (MSA) or, if the station is not located in an MSA, in the county in which it is located.^{16/} The Commission will review the station's EEO record by reference to a labor force for a smaller area, however, if the station can demonstrate that use of such alternative labor force data is appropriate. The station must show basically that the station is located far from areas with significant minority population; commuting from those areas to the station is difficult; and recruitment efforts directed at the minority labor force in the MSA have been unsuccessful. The Commission seeks comment on the showing required to invoke use of alternative labor force data, and whether it would be appropriate to allow stations to show that their signal contour does not cover a population center as an alternative to showing the distance of the station from that population center.^{17/}

APTS believes that the test employed by the Commission to determine when it is appropriate to use alternative labor force data is basically sound and should be continued. The Commission's proposal to focus on whether prospective employees are unwilling to

^{15/}(...continued)

time paid positions, it should not be required to recruit from outside the university for positions filled by students since that would frustrate the educational function of the station as a university-operated facility. It should, of course, have to afford equal opportunity in employment to all students interested in such positions, regardless of race, color, religion, national origin or sex.

^{16/} See Notice at ¶ 10 and note 19.

^{17/} Notice at ¶ 35.

commute to the station due to transportation difficulties rather than whether the commute is, objectively speaking, "difficult." may be a good modification of the test. The real issue is whether prospective job applicants living in a particular locale are in fact willing to commute to the station; if experience indicates that they are not, then population data for that locale should not be included in the labor force profile. APTS does not believe that it would be appropriate to consider whether the station's signal contour encompasses a particular population area because the reach of the station's signal is unlikely to have any bearing on a prospective employee's willingness to work at the station.

CONCLUSION

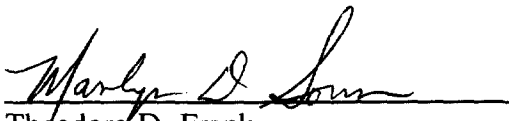
For the foregoing reasons, the Association of America's Public Television Stations respectfully suggests that the Commission afford broadcast stations greater flexibility in fulfilling their EEO obligations, consider internship and other training programs in evaluating a station's EEO performance, and include part-time as well as full-time employees in the station's workforce profile evaluated at renewal time.

Respectfully submitted,

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